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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2010-320

13 ELIZABETH ANNE BROWN
3830 Elijah Court #432
14 San Diego, CA 92130

A C C U S A T I O N

15 Registered Nurse License No. 710979

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Louise R. Bailey, M.Ed., RN, brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board),
22 Department of Consumer Affairs.

23 2. On August 22, 2007, the Board of Registered Nursing issued Registered Nurse
24 License Number 710979 to Respondent Elizabeth Anne Brown. The license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on January 31, 2011,
26 unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board, Department of Consumer Affairs,
3 under the authority of the following laws. All section references are to the Business and
4 Professions Code unless otherwise indicated.

5 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent
6 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
7 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
8 Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a
10 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
11 against the licensee or to render a decision imposing discipline on the license. Under section
12 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within
13 eight years after the expiration.

14 STATUTORY PROVISIONS

15 6. Section 2761 of the Code states:

16 The board may take disciplinary action against a certified or licensed
17 nurse or deny an application for a certificate or license for any of the following:

18 (a) Unprofessional conduct, which includes, but is not limited to, the
19 following:

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21 (f) Conviction of a felony or of any offense substantially related to the
22 qualifications, functions, and duties of a registered nurse, in which event the
23 record of the conviction shall be conclusive evidence thereof.

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25 7. Section 2762 of the Code states:

26 In addition to other acts constituting unprofessional conduct within the
27 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
28 for a person licensed under this chapter to do any of the following:

. . . .

(b) Use any controlled substance as defined in Division 10 (commencing
with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent

1 or in a manner dangerous or injurious to himself or herself, any other person, or
2 the public or to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license.

3 (c) Be convicted of a criminal offense involving the prescription,
4 consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
5 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

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7 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
8 revoke a license on the ground that the licensee has been convicted of a crime
9 substantially related to the qualifications, functions, or duties of the business or profession for
10 which the license was issued.

11 9. Section 493 of the Code states:

12 Notwithstanding any other provision of law, in a proceeding conducted by
13 a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a
14 person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions,
15 and duties of the licensee in question, the record of conviction of the crime shall
be conclusive evidence of the fact that the conviction occurred, but only of that
16 fact, and the board may inquire into the circumstances surrounding the
commission of the crime in order to fix the degree of discipline or to determine if
17 the conviction is substantially related to the qualifications, functions, and duties
of the licensee in question.

18 As used in this section, "license" includes "certificate," "permit,"
19 "authority," and "registration."

20 REGULATORY PROVISIONS

21 10. California Code of Regulations, title 16, section 1444, states:

22 A conviction or act shall be considered to be substantially related to the
23 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
24 manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

25 (a) Assaultive or abusive conduct including, but not limited to, those
26 violations listed in subdivision (d) of Penal Code Section 11160.

27 (b) Failure to comply with any mandatory reporting requirements.

28 (c) Theft, dishonesty, fraud, or deceit.

1 (d) Any conviction or act subject to an order of registration pursuant to
2 Section 290 of the Penal Code.

3 11. California Code of Regulations, Title 16, section 1445 states:

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5 (b) When considering the suspension or revocation of a license on the
6 grounds that a registered nurse has been convicted of a crime, the board, in
7 evaluating the rehabilitation of such person and his/her eligibility for a license
8 will consider the following criteria:

9 (1) Nature and severity of the act(s) or offense(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or
12 offense(s).

13 (4) Whether the licensee has complied with any terms of parole,
14 probation, restitution or any other sanctions lawfully imposed against the licensee.

15 (5) If applicable, evidence of expungement proceedings pursuant
16 to Section 1203.4 of the Penal Code.

17 (6) Evidence, if any, of rehabilitation submitted by the licensee.

18 COST RECOVERY

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
20 the administrative law judge to direct a licensee found to have committed a violation or
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
22 and enforcement of the case.

23 FIRST CAUSE FOR DISCIPLINE

24 (November 19, 2009 Criminal Conviction for DUI on June 21, 2009)

25 13. Respondent has subjected her license to disciplinary action under sections 490
26 and 2761, subdivision (f) of the Code in that she was convicted of a crime substantially related to
27 the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

28 a. On or about November 19, 2009, in a criminal proceeding entitled *People
of the State of California v. Elizabeth Brown*, in San Diego County Superior Court, Central
Division, case number M-085669, Respondent was convicted on her plea of guilty of violating
Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .08 or more.

1 b. As a result of the conviction, on or about November 19, 2009, Respondent
2 was sentenced to five years summary probation; completion of a MADD impact panel and a
3 nine-month First Conviction Program; payment of \$2,102 in fines, fees, and restitution; and
4 standard alcohol conditions, including not driving with a measurable amount of alcohol/drugs in
5 the blood.

6 c. The facts that led to the conviction were that at about 0310 hours on June
7 21, 2009, a Fish and Game Warden observed Respondent's vehicle weaving over the double
8 yellow lines on SR 67 near Ramona, stopping at a green traffic signal at the intersection of
9 Espola and High Valley Roads, and rubbing its wheels along the curb. A San Diego Deputy
10 Sheriff responded to the Warden's call for assistance after he stopped Respondent and advised
11 the Deputy that Respondent appeared to be "very intoxicated." The Deputy noted that
12 Respondent's eyes were bloodshot and watery, and she smelled of alcohol. She could not
13 smoothly follow the Deputy's movement of his finger from side to side, swayed while standing,
14 could not stand on one leg without hopping and falling backwards, and failed the finger to nose
15 and heel to toe tests. Two hand-held breath tests administered at the scene with Respondent's
16 consent resulted in BAC readings of .269 and .247. Respondent admitted drinking "at least two
17 glasses of wine" earlier in the evening. Respondent was arrested and transported to the Poway
18 Sheriff's station. The August 3, 2009 misdemeanor complaint filed against Respondent charged
19 her with violating Vehicle Code section 23152, subdivisions (a) and (b).

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

22 14. Respondent has subjected her license to disciplinary action under sections 2761,
23 subdivision (a), and 2762, subdivision (b) of the Code in that on or about June 21, 2009, as
24 detailed in paragraph 13, above, Respondent used alcoholic beverages to an extent or in a
25 manner dangerous or injurious to herself and the public, which constitutes unprofessional
26 conduct substantially related to the qualifications, functions, and duties of a registered nurse.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

3 15. Respondent has subjected her license to disciplinary action under sections 2761,
4 subdivision (a), and 2762, subdivision (c) of the Code in that on or about June 21, 2009, as
5 detailed in paragraph 13, above, Respondent was convicted of criminal offenses involving the
6 consumption and self-administration of alcohol, which constitutes unprofessional conduct
7 substantially related to the qualifications, functions, and duties of a registered nurse.

8 **PRAYER**


9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 710979, issued to
12 Elizabeth Anne Brown;

13 2. Ordering Elizabeth Anne Brown to pay the Board of Registered Nursing the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 1/7/10

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20 LOUISE R. BAILEY, M.Ed., RN
21 Interim Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant
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